

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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SELIM ZHERKA and THE GUARDIAN NEWS, INC.,

Plaintiffs,

07 Civ. 8047 (CLB)

-against-

RUSSELL MARTINEZ, individually, STEPHEN
FORCE, individually, and EDWARD FALCONE,
individually,

Defendants.
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**NOTICE OF
MOTION**

PLEASE TAKE NOTICE that upon the annexed Declaration of Edward J. Phillips, Esq., dated November 2, 2007, and the exhibits annexed thereto, the annexed Declaration of Stephen E. Force, dated November 1, 2007, and the exhibits annexed thereto, the annexed Declaration of Russell Martinez, dated November 2, 2007, the annexed Declaration of Russell Deutschen, dated November 1, 2007, the accompanying Memorandum of Law, and upon all of the pleadings and proceedings heretofore had herein, proposed Intervenor-Defendant, the Yonkers Public Library (the "Library") will move this Court before the Hon. Charles L. Brieant, U.S.D.J., at the United States Courthouse located at 300 Quarropas Street, White Plains, New York 10601, on December 14, 2007, at 10:00 a.m., or as soon thereafter as counsel may be heard, for an Order:

1. granting the Library leave to intervene in this action as a defendant, pursuant to Fed. R. Civ. P. 24(a), on the ground that (i) the Library has an interest in the subject matter of this action as set forth in its proposed Answer, (ii) the Library is so situated that disposition of this action without its intervention may impair its ability to protect that interest, and (iii) the Library's interest cannot

be adequately represented by existing parties, or alternatively, granting the Library leave to intervene pursuant to Fed. R. Civ. P. 24(b)(2), on the grounds that the claims asserted by the Library raise common issues of fact and law as asserted by Plaintiffs in this action; and


2. issuing a preliminary injunction, pursuant to Fed. R. Civ. P. 65, directing Plaintiffs to forthwith remove the newspaper receptacles for The Westchester Guardian that were placed inside the premises of the Yonkers Riverfront Library, located at 1 Larkin Center, Yonkers, New York 10701 (the "Riverfront Library"), and the Yonkers Grinton I. Will Library, located at 1500 Central Park Avenue, Yonkers, New York 10710 (the "Will Library"), and enjoining Plaintiffs from causing any further newspaper receptacles to be placed inside the Riverfront and Will Libraries, including but not limited to inside any atrium(s) and/or vestibule(s) of said libraries; and

PLEASE TAKE FURTHER NOTICE that pursuant to Local Civil Rule 6(b), answering papers are to be served upon the undersigned attorneys within ten (10) business days after service of the instant moving papers, and reply papers will be served within five (5) business days after service of the answering papers.

Dated: November 2, 2007
White Plains, New York

Respectfully Submitted,

KEANE & BEANE, P.C.

By: 

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